



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
2 NAVY ANNEX
WASHINGTON DC 20370-5100

BJG
Docket No: 1623-00
7 April 2000

MAJ [REDACTED] USMC
[REDACTED]
[REDACTED]

Dear Major [REDACTED]

This is in reference to your application for correction of your naval record pursuant to the provisions of title 10 of the United States Code, section 1552.

It is noted that the Commandant of the Marine Corps (CMC) has directed removal of your contested fitness report for 21 June to 31 July 1997.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 5 April 2000. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, your naval record and applicable statutes, regulations and policies. In addition, the Board considered the report of the Headquarters Marine Corps Performance Evaluation Review Board (PERB), dated 1 March 2000, a copy of which is attached.

After careful and conscientious consideration of the entire record, the Board found that the evidence submitted was insufficient to establish the existence of probable material error or injustice warranting removal of the remaining contested fitness report. In this connection, the Board substantially concurred with the comments contained in the report of the PERB. Accordingly, your application for relief beyond that effected by CMC has been denied. The names and votes of the members of the panel will be furnished upon request.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon submission of new and material evidence or other matter not previously considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official records.

Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

W. DEAN PFEIFFER
Executive Director

Enclosure



DEPARTMENT OF THE NAVY
HEADQUARTERS UNITED STATES MARINE CORPS
3280 RUSSELL ROAD
QUANTICO, VIRGINIA 22134-5103

1623-00
IN REPLY REFER TO:
1610
MMER/PERB
1 MAR 2000

MEMORANDUM FOR THE EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF
NAVAL RECORDS

Subj: MARINE CORPS PERFORMANCE EVALUATION REVIEW BOARD (PERB)
ADVISORY OPINION ON BCNR APPLICATION IN THE CASE OF MAJOR
[REDACTED] USMC

Ref: (a) Major [REDACTED] DD Form 149 of 11 Nov 99
(b) MCO P1610.7D w/Ch 1-2
(c) MCO P1610.7D w/Ch 1-4

1. Per MCO 1610.11C, the Performance Evaluation Review Board, with three members present, met on 23 February 2000 to consider Major [REDACTED] petition contained in reference (a). Removal of the following fitness reports was requested:

- a. Report A - 970621 to 970731 (AN) -- Reference (b) applies
- b. Report B - 970801 to 971120 (TD) -- Reference (c) applies

2. The petitioner contends that both reports are based on the Reporting Senior's biased opinions and perceptions rather than on known facts. With specific regard to Report A, the petitioner challenges the extremely short period of observation and believes the rendering of an "observed" performance appraisal in this case is not in keeping with the provisions of subparagraphs 3004.8b(2) and 3005.1 of reference (b). The petitioner further objects to an observed marking in Item 13g (Tactical Handling of Troops) since, during the period covered, he was neither in a position of "aeronautical leadership" nor in a flying status. As a final matter relative to Report A, the petitioner believes the Section C narrative contains inappropriate references to pending matters and that the Reviewing Officer's comments render the report "adverse." Concerning Report B, the petitioner again objects to an observed mark in Item 13g since he flew minimally during the reporting period, and then only as a copilot. He also believes the assigned rating of "excellent" in that category is a *de facto* reference to the proceedings of the Field Flight Performance Board (FFPB). It is the petitioner's opinion and belief that the marks in Section B of Report B are inconsistent with the comments in Section C and offers the Reviewing Officer's non concurrence as substantiation. Finally, the petitioner states that since he was returned to a flight status, no mention or inference to the FFPB should appear in his fitness report. To support his appeal, the petitioner provides his own detailed statement, excerpts from

Subj: MARINE CORPS PERFORMANCE EVALUATION REVIEW BOARD (PERB)
ADVISORY OPINION ON BCNR APPLICATION IN THE CASE OF MAJOR
[REDACTED] USMC

his Flight Logbook, a copy of Notification of Temporary Suspension of Duties Involving Flying, and a copy of Notice of Initial Session of FFPB.

3. In its proceedings, the PERB concluded that:

a. The removal of Report A is warranted and has been directed.

b. Report B is both administratively correct and procedurally complete as written and filed.

(1) The overall evaluation appears to have been based on a clear representation of daily performance over a solid four-month period and provides a meaningful acknowledgment of the petitioner's duties in his primary billet as the Logistics Officer. Although the petitioner's flight hours during the period were not overabundant, he furnishes nothing that would invalidate an observed grade in Item 13g. In fact, the Reviewing Officer indicates he would upgrade that mark (as well as the one in Item 13d (Handling Officers)) to "outstanding." In this regard, the Board is quick to point out that there is nothing internally inconsistent with the report; nor does the Reviewing Officer's **opinion** serve to invalidate the report or somehow lend credence to the petitioner's argument of "inconsistency."

(2) Contrary to the petitioner's beliefs, Report B contains absolutely no mention or inference to the FFPB. Likewise, it cannot be presumed (nor is it documented) that the Reporting Senior's decision to assign a mark of "excellent" in Item 13g has a direct correlation to the FFPB. Finally, the petitioner offers absolutely no documentary or substantive evidence whatsoever to prove that he somehow rated more than what has been recorded in Report B.

4. The Board's opinion, based on deliberation and secret ballot vote, is that Report B should remain a part of Major [REDACTED]'s official military record.

Subj: MARINE CORPS PERFORMANCE EVALUATION REVIEW BOARD (PERB)
ADVISORY OPINION ON BCNR APPLICATION IN THE CASE OF MAJOR
[REDACTED] USMC

5. The case is forwarded for final action.

[REDACTED]

Colonel, U.S. Marine Corps
Deputy Director
Personnel Management Division
Manpower and Reserve Affairs
Department
By direction of the Commandant
of the Marine Corps